

Annex C

Statement of Work

PRIVATIZATION: ASSESSMENT AND SUPPORT

The contractor will initiate and complete a study of state-owned enterprises in Iraq (to be identified by USAID) assessing the status of those enterprises in terms of their potential market value for sale as on-going concerns. Contractor studies will take account of other available analyses and studies of privatization in Iraq. The contractor will categorize the SOEs from largest to smallest in terms of economic impact. The contractor will also evaluate and recommend the potential for liquidation or dissolution of specific firms or industries, if necessary. The assessment/study will also elaborate on the potential of specific firms or industries for sale to strategic investors and identify the range of potential strategic investors. For specific SOEs or industries where strategic investment is unlikely, then the contractor will analyze and report to USAID regarding the feasibility for undertaking a “mass privatization” and discuss various option for its implementation possibilities, such as vouchering. Contractor analysis and assessment of the “mass privatization” option shall take due account of the deficiencies alleged in previous mass privatizations, and shall recommend options for overcoming and responding to these deficiencies in the case of Iraq. Contractor analysis shall take due account of the special circumstances in Iraq’s economic situation that might either favor or oppose such a “mass privatization.”

Based on the results of the assessments and evaluations, the contractor, with USAID approval, will begin implementation of a Comprehensive Privatization Program (CPP), focusing potentially on strategic investors or on creating and supporting the institution responsible for undertaking privatization. If changes to legislation are required, contractor will provide assistance to develop authorizing legislative reform specifically to allow for the privatization of State-owned industries and firms and/or establishing a privatization entity. The contractor will implement USAID-approved recommendations to begin supporting the privatization, especially those in the oil and supporting industries.

Should strategic sector evaluation be selected, the contractor will focus on three areas of activity:

1. Provide oversight and guidance in the financial restructuring of enterprises comprising the current list of companies, and others that may be identified in the future, selling those assets of value in an effort to increase the competitiveness of the firm, and in turn, the economy.
2. Provide counsel in identifying and negotiating enterprises' liabilities to state-owned bank and non-bank financial institutions, utilities, and other creditors with outstanding claims upon the enterprises.
3. Conceive and implement a public relations and communications strategy that will serve to inform and educate the public.

APPROACH AND OBJECTIVES

The government may use a combination of selected strategic enterprise sales, or a tender program and a broad-based Mass Privatization Program (MPP) or a combination of the two approaches. The MPP would also entail improving/developing the capacity for secondary trading of shares. Of the total companies still in the state hands, it is expected that a percentage of selected enterprises will be sold through Strategic Investor Sales (SIS), direct sales, and the remainder will be privatized through MPP, providing the strategic reasons for undertaking the latter approach are in place.

USAID will provide assistance to the government to commence enterprise privatization and selected enterprise restructuring in a manner that ensures competition and transparency. Specific Objectives are: Undertake a comprehensive survey of SOEs and state regulated enterprises and industries.

- Assist the Government to refine policies and strategies, and implement legislation and regulation making privatization and/or resolution of target enterprises more competitive and transparent, and ensuring the efficient and methodic resolution of distressed debt owed to commercial
- Assist the Government to establish and implement competitive and transparent tender, sale and resolution procedures for all state-owned companies with a goal of rapid divestiture.
- Assist the Government to prepare and implement strategies to sell or liquidate the current state owned companies.
- Assist the Government to conceive and implement a comprehensive communications and public relations strategy informing and educating the public about economic restructuring and privatization.

Specific Work Requirements are described below.

TASKS

This project will be divided into two phases. The first phase is intended to last for no longer than one year and will seek to establish consensus, develop an approved base line and action plan for the CPP and complete the initial drafting of the privatization and securities laws.

The second phase is intended to last for approximately two years focusing on implementation of the CPP action plan and a secure and regulated secondary trading capability.

Phase One

- A. Establish Consensus and an Approved CPP Design and Action Plan encompassing both MPP and SIS.

Assist the Government to structure and coalesce around a design and action plan for the overall CPP. While the overall commitment is strong, there is not yet consensus on a specific design. Differences are driven by the concern that the CPP be fair and that problems encountered in other privatization programs be avoided. As noted there are different views on the extent of social and state capital to be included in the program, what should be included in the MPP and the SIS, on the speed and pace of implementation, and on who should participate. All of this is compounded by politics and individual agendas and the fact that responsibility for privatization is diffuse. The net effect is that stakeholders have not come together with consensus on the CPP. The Contractor will provide senior advisors specialized in strategic investor sales, in mass privatization programs and securities trading to forge a consensus on the design of the CPP, including timetable, tasks and responsibilities. (Again, in this context, the CPP is not only privatization but also a secure and regulated secondary trading capability). The contractor will work closely with other donor-funded programs, thereby avoiding any program design incompatibilities.

B. Legal Support

On legal issues, the mass privatization advisor, the strategic investor sales advisor, and securities trading advisor will review relevant laws and make a preliminary assessment of:

- laws that may need to be changed immediately (or new laws written) so that overall CPP (SIS and MPP) can proceed effectively
- further work on laws and regulation that will need to be included in Phase II.

Phase Two: Implementation

Phase Two will depend *inter alia* on the Governments approval of the design of the CPP, and the adequacy of the legal framework.

A. Develop the CPP

Planning and Communication:

1. Liaise closely with other strategy advisors.
2. Coordinate contractors complementary work focusing primarily on the supply side of CPP, and on public education and securities trading.

Supply-side work: inventory of companies and shares:

1. Review print-out on all companies on which Government has basic data, including number of shares and shareholders.
2. Work with Government and Privatization Entities to ensure consensus on companies to include in CPP (aim for as many companies as possible to be included in SIS or in the MPP).
3. Work with Government to maximize fundamental data and financial information flow from companies whose details have not yet been collated.
4. Agree with Government on parameters of the CPP:
Enterprises to be sold directly via SIS and via MPP

% of shares to go through MPP and SIS; and % of companies? theoretical ?value? to go into MPP. An ideal MPP could aim for the divestiture of a uniform percentage of equity in participant companies. However, companies for which equity stakes are to be sold to strategic investors may be exempt from this uniform structure.

5. Ensure Government Agencies have company information, etc. in electronic form.

Supply-side work: offering materials

1. Develop template - all information to be prepared for/about companies for sale.
2. Assist Government staffs, and other Government representatives in obtaining information from companies, as required.

Public Education Program

1. Prepare an action plan for public information and education, plus a cost estimate. This will require discussions among the relevant Government Privatization Agencies and Ministry of Finance (MoF) to obtain firm commitments at high levels and approval of funding for such public education work.
2. A fair and transparent action program should include: initial phase: explaining the CPP and its long-term objectives/benefits including the introduction of secondary trading second phase: the auction process and what citizens need to do to participate in the MPP; assist in conducting auction; announcement of auction results; regular press releases, press briefings and advertisements.
3. Plan and carry out shareholder communications: develop a standard notification package to be used to advise and inform new shareholders; seek government approval for dissemination of shareholder notification package, as required; distribute to new shareholders, with a receipt, of his/her new shareholding.

B. Secondary Trading

Develop a Share Registry and Depository

1. Work with Government to introduce and operate a centralized share Registry and Depository.
2. Develop and initiate a secure share Registry to coincide with the MPP.
3. Plan eventually to spin-off Share Registry and Depository from Government as an independent entity to ensure the independence and integrity of the financial process.
4. Assist in the development of an appropriate and just fee schedule, if applicable.

Develop a Clearing and Settlement System

1. Work with the Government and Stock Exchange and other market participants to develop/purchase the appropriate Clearing/Settlement System.
2. Integrate Registry, Depository, Clearing/Settlement System and Trading Systems to ensure effective and smooth operation with each other.
3. Use existing relevant capabilities in the proposed financial infrastructure containing Share Registry, Depository, Clearing/Settlement and Trading Systems.

4. Spin-off appropriate financial system(s) from Government if required, to ensure integrity of information and independence.
5. Train relevant staff in new system
6. Design and introduce appropriate and fair fee scales if required.

Develop Secondary Trading System

1. Work with Government and Stock Exchange to develop appropriate operating procedures, rules, membership requirements and governance procedures required for a world-class exchange.
2. Assist Government and Exchange in developing or buying and adapting an appropriate trading system.
3. Ensure compatibility of proposed system to be integrated.
4. Ensure that secondary trading of newly acquired shares may begin on conclusion of the MPP. (The systems could be used in advance for trading of shares in companies that are already private).
5. Train registered staff of market participants.

Privatization Investment Funds (PIF)

1. Review the feasibility and costs/benefits of PIFs. Assuming review confirms the desirability of establishing PIFs, proceed with the following tasks.
2. Support in the formation of three-to-five PIFs.
3. Establish definition, purpose and operation of PIFs
4. Establish regulatory framework necessary within which PIFs will operate - in consultation with other advisors? work on stock exchange regulations.
5. Train appropriate personnel.
6. Design and introduce appropriate and fair fee scales as required.

Develop Market Intermediaries

1. Assist in the development of broker-dealers, corporate finance practitioners, investment advisors, large and small institutional investors, when required.
2. Establish regulations and recruitment methods for creating a broker/dealer association provide training in trading and in corporate finance.
3. Provide training in basic asset management controls and organization.
4. Advise on long-term development of financial instruments/products and trading in addition to secondary trading of shares.
5. Assist in the development of OTC trading of lesser-known, smaller companies if allowed by regulatory authorities.

Develop a Supervision and Regulatory Capability

1. Assist and support the relevant authority to ensure supervision of trading/clearance procedures. Assist Governments efforts to oversee/regulate trading of securities in conjunction with Securities Commission to avoid abuses.

2. Propose and initiate self-regulating organizations if required, recommending an organization structure, and developing and initiating actions to start the first organization.
3. Develop an independent broker-dealer SRO, if it is determined that the Stock Exchange cannot be converted into an acceptable infrastructure (exchange) SRO. Membership should be required in a SRO to access the privatization and secondary markets. In the absence of a more fully functioning civil judicial system, the best alternative means of enforcement may be to suspend or revoke SRO membership.

Other Necessary Tasks

1. Assist in training and registration of trading and operational staff and principals.
2. Assist in the training and registration of financial research analysts, portfolio managers, and investment advisors.
3. Assist in development of commission rate, transfer fee and securities tax schedules if applicable.

C. Selected Enterprise Restructuring

If the assessment in Phase 1 indicates the need, develop a plan and scope of work to assist with the restructuring of selected SOEs. This should be understood as a short term requirement to yield immediate employment and productivity benefits. The longer-term objective is still to prepare these industries for privatization and private management. (Note of Caution: Direct involvement of USAID in the restructuring of individual firms or industries can be resource intensive and unless carefully designed may not be cost effective)

TANGIBLE RESULTS / BENCHMARKS

USAID will judge the Contractor's success (or lack thereof) in the task order based upon whether or not the Tangible Results and Benchmarks are achieved. In the event any one or more of the Tangible Results or Benchmarks are not achieved or should the Contractor at any time realize that they are not achievable, then the Contractor shall immediately advise USAID in writing and, in the next report required as part of the task order 'Reporting Requirements', shall provide a complete explanation of the circumstances relating thereto.

Phase One

Benchmarks:

- Within 60 days complete an initial survey of SOEs and State regulated enterprises
- Within 90 days, a draft plan for the CPP showing tasks, responsibilities and timetables
- Within 120 days, a draft plan for establishing secondary trading
- Within 120 days, a preliminary review of relevant privatization and securities laws by non-lawyers.

Tangible Results:

- Within 180 days a completed plan for the CPP including the broad parameters for SIS and the MPP which is approved by the Government

Phase Two

Benchmarks (These are quite aggressive and may need to be adjusted following Phase 1):

Comprehensive Privatization Plan including MPP and SIS

- 60 days: Finalize inventory of Companies
- 120 days: Finalize Data on Companies
- 80 days: Finalize Preparation, Agreement, Financing and Information and Publicity Campaign
- 240 days: Preparation of Secondary Trading

Registrar / Depository

- 60 days: Review laws and regulations affecting share transfer and clearing and settlement
- 120 days: Implement initial registrar software solution
- 180 days: Full roll-out of registrar, including operating procedures and training

Clearing / Settlement

- 90 days: Review options for clearing and settlement
- 120 days: Develop clearing and settlement strategy
- 180 days: Develop tender materials for complete electronic clearing and settlement solution
- 240 days: Operating clearing and settlement system

Trading Systems

- 120 days: Develop operating procedures, rules, membership requirements, and governance procedures for the Stock Exchange
- 180 days: Review options for an electronic trading system
- 240 days: Develop tender materials for electronic trading system
- 360 days: Operating trading system